IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 22ND OCTOBER 2007 / 30TH ASWINA 1929

TRC.No. 4 of 2003

(TA.670/2001 OF KERALA AGRICULTURAL INCOME TAX AND SALES TAX APPELLATE TRIBUNAL,ADDL.BENCH,PALAKKAD)

REVISION PETITIONER/APPELLANT/ASSESSEE

M/S. NATIONAL STORES,
PERINTHALMANNA.

BY ADV. SRI.E.P. GOVINDAN
ADV. SRI.JOSE DAVIS

RESPONDENT/RESPONDENT/REVENUE

STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
TAX DEPARTMENT,
TRIVANDRUM.

BY SR. GOVERNMENT PLEADER SHRI MUHAMMED RAFIQ.

THIS TAX REVISION CASE HAVING BEEN FINALLY HEARD ON 22/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

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TAX REVISION CASE. No. 4 OF 2003

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Dated this the 22nd October, 2007

O R D E R

H.L. Dattu, C.J.:

The assessee has framed the following questions of law for our consideration and decision:

(i) Whether on the facts and in the circumstances of the case, the Appellate Tribunal is justified in law in confirming the rejection of books of accounts of the petitioner.

ii) Whether on the facts and in the circumstances of the case, the Appellate Tribunal is justified in holding that stock inventories produced subsequent to the inspection was not the genuine one. Has not the Tribunal committed an error in not appreciating the facts properly.

iii) Whether on the facts and in the circumstances of the case, the Appellate Tribunal is justified in holding that the stock differences detected on the basis of the subsequently produced stock inventories cannot be treated as the actual variations available at the time of inspection.

iv) Whether on the facts and in the circumstances of the case, the Appellate Tribunal is justified in holding that there was misclassification of taxable items at a large extent. Has not the Tribunal committed an error in not verifying the duly audited report?

v) Whether on the facts and in the circumstances of the case, the Appellate Tribunal is justified in holding that the revision petitioner have made an unaccounted purchase for Rs.2,970/-

vi) Whether on the facts and in the circumstances of the case, the Appellate Tribunal is justified in sustaining the addition made by the lower authorities. Is not the addition disproportionate and excessive?"

2. The factual matrix are: The assessee is a dealer registered under the provisions of the Kerala General Sales Tax Act. The assessee is a partnership firm, running a hardware shop at Perinthalmanna in Malappuram district. The assessment year in question is 1997-98.

3. The business premises of the assessee had been inspected by the Intelligence Squad of Sales Tax Department . After such inspection, they have prepared a shop inspection report. In that report, there is a categorical finding that the assessee had not maintained either the stock register or stock inventory at the time of inspection.

4. The assessee in the annual return filed before the assessing authority had conceded the total turnover of Rs.52,48,298.95/- and the taxable turnover of Rs.15,01,213.30/-. Before completion of assessment proceedings, the assessing authority had received the shop inspection report of the Inspection Squad of the Department. After rejecting the returns so filed by the assessee , the assessing authority had issued a pre-assessment notice. In the said notice, the assessing authority had pointed out the irregularities pointed by the inspection squad of the Department. The irregularities pointed out by the assessing authority, as found in the assessment order, is extracted below:

"The books of accounts cannot be accepted as correct and complete for the following reasons:

1. The following purchase is not seen supported by bill.

Madhu Industries 09.06.1997 Rs. 2970.00

2. You have not kept and produced either stock register or stock inventory.

3. Your business place was inspected by the Intelligence Officer, Malappuram on 13/11/1997 and prepared SIR No. 294933. Subsequently, the books of accounts were verified by that office. On verification certain irregularities and stock differences were noticed. The discrepancies were admitted by you and as per your request the offence was compounded on payment of Rs. 350/- vide order No.TRL.3/97-98 dtd. 03/12/1997. The non-accounting of purchases and stock difference are startling example for sales and purchases.

4. You have mis-classified the taxable items at a large extent. The following details submitted by yourself would clear the point purchase list given by you in the Head of 8% taxable goods contain- cement products, brushes, paints, varnishes, powder , locks of all varieties, rubber products, plastics items. These items come under 10% and 12.5% respectively. Hence, the sales turnover furnished under 8% would attract 10% and 12.5% according to the volume of purchases and sales involved. Besides that you have reported a taxable 6% in your statement. These items would attract 8% tax instead of 6%.

I have verified the SIR with reference to the above and available records. At the time of the inspection there was no stock register or stock inventory. In the absence of stock register or stock inventory, I was really surprised how the verification was fruitfully completed. So the exercise done by the Intelligence Officer is not sufficient. Hence an addition on turnover is required.

The sales turnover of taxable goods seen incredibly low, considering the opening stock, purchase and closing stock.

From the above, it was clear that you have failed to maintain the books of accounts correctly and completely. It was therefore proposed to reject the books of accounts and to complete the final assessment to the best of judgment as follows:"

5. After rejecting the books of accounts, the assessing authority has added 10% to the total turnover declared by the assessee and thereafter has quantified the tax liability. Aggrieved by the said order, the assessee had unsuccessfully filed first appeal before the 1st appellate authority and second appeal before the Kerala Agricultural Income Tax and Sales Tax Appellate Tribunal. The Tribunal has not interfered with the orders passed by either the first appellate authority or the assessing authority. That is how, the assessee is before us in this Tax Revision Case.

6. The learned counsel appearing for the assessee would submit that the best judgment assessment order passed by the assessing authority is without any basis whatsoever. According to the learned counsel, the inspecting squad of the Department had compounded the offence departmentally by accepting a sum of Rs. 350/- for the irregularities which are said to have been detected at the time of inspection by the inspection squad of the Department. Therefore, it is submitted that the assessing authority should have added only the actual suppression that was detected by the inspecting squad of the Department.

7. Shri Muhammed Rafiq, learned Senior Government Pleader appearing for the respondent, justifies the orders passed by the assessing authority. The first principles, for the purpose of best judgment assessment

order, is enunciated by the Apex Court in the case of ***Commissioner of Sales Tax vs. H.M. Esufali H.M. Abdulali*** (**[1973] 32 STC 77**). In the said decision, the Court has observed as under:

> *"In estimating any escaped turnover, it is inevitable that there is some guess-work. The assessing authority while making the best judgment assessment, no doubt, should arrive at his conclusion without any bias and on a rational basis. That authority should not be vindictive or capricious. If the estimate made by the assessing authority is a bona fide estimate and is based on a rational basis, the fact that there is no good proof in support of that estimate is immaterial. Prima facie, the assessing authority is the best judge of the situation. It is his best judgment and not anyone else's. The High Court cannot substitute its best judgment for that of the assessing authority."*

8. In the returns filed by the assessee for the assessment year 1997-98, the assessee had conceded the total turnover of Rs. 52,48,298.95 /- and the taxable turnover for a sum of Rs.15,01,213.30/- . The assessing authority has rejected the returns so filed by the assessee . It has been pointed out by the assessing authority that the assessee has not maintained either the stock register or the stock inventory . He has further stated that the assessee in the returns filed had mis-classified the goods and therefore, the return so filed by the assessee cannot be accepted. Accordingly, he had made just an addition of 10% of the total turnover conceded by the assessee. That comes to Rs. 5,24,829.89/- In a case of this nature, in our opinion, the assessing authority has shown a lenient attitude towards the assessee , when the stock books were not available and when the assessee had not even maintained stock inventories and had misclassified the goods. The assessing authority should

have made some more addition to the total turnover declared by the assessee. But the assessing authority, as we have already stated, taking a very lenient view in the matter, has just made an addition of a sum of Rs. 5,24,829.89/- to the total turnover declared by the assessee and thereafter has proceeded to quantify the tax liability of the assessee.

9. The assessment order made by the assessee is best judgment assessment . Since it is a best judgment, the assessing authority was expected to give proper reasons to reject the books of accounts and then to proceed to pass the best judgment assessment. Time and again , it is settled that the assessing authority while rejecting the returns, is not expected to complete the said assessment on surmises, presumptions or whims and fancies. In the instant case, the assessing authority before rejecting the returns filed by the assessee, has given out detailed reasons for rejecting the returns filed by the assessee and those reasons can neither be construed as either presumptions or assumptions . The said rejection order was passed purely based on the report of the intelligence wing of the Department. If the assessing authority has relied on that information and has proceeded to complete the best judgment assessment , in our opinion, in a Revision, we are not expected to interfere with the said best judgment assessment. In that view of the matter, the Revision case filed by the assessee requires to be rejected and the questions of law framed by the assessee require to be answered against the assessee and in favour of the Revenue. Accordingly, we pass the following:

O R D E R

i) Tax Revision Case is rejected.

ii) The questions of law framed by the assessee is answered against the assessee and in favour of the Revenue.

iii) Pending Civil Miscellaneous Petitions are also disposed of.

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

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H.L. DATTU, C.J.&
K.T. SANKARAN, J.

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Dated this the 22nd October, 2007

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